



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

OCT 12 2017

Mark Gilliam

Peoria, AZ 85345

RE: MUR 7041
United Association of Journeymen and
Apprentices of the Plumbing and
Pipefitting Industry of the United States
and Canada Local 469, *et al.*

Dear Mr. Gilliam:

This is in reference to the Complaint you filed with the Federal Election Commission on April 13, 2016, alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On February 9, 2017, the Commission found reason to believe the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada Local 469 ("Local 469"), and the United Association of Plumbers and Pipefitters Local 469 Federal Political Action Committee ("Arizona Pipe Trades Fed. PAC") and Aaron Butler in his official capacity as treasurer *f/k/a* Arizona Pipe Trades Local 469 PAC and Phillip McNally in his official capacity as treasurer, violated 52 U.S.C. § 30118(b)(3)(C) and 11 C.F.R. § 114.5(a)(2) and (4)-(5) through the use of a deficient payroll authorization form and 52 U.S.C. § 30118(b)(3)(A) and (C) and 11 C.F.R. § 114.5(a)(1)-(2) and (4) through the maintenance and publication of a noncontributors list in conjunction with verbal solicitations. On the same date, the Commission dismissed with a letter of caution the allegation that Arizona Pipe Trades Local 469 and Aaron Butler in his official capacity as treasurer violated 52 U.S.C. § 30103 and 11 C.F.R. § 102.1(c) by failing to register as a federal political committee.

On September 27, 2017, the Commission accepted a signed conciliation agreement with Local 469 and Arizona Pipe Trades Fed. PAC. It also dismissed the allegations that Aaron Butler, Phillip McNally, and Israel G. Torres, in their individual capacities, knowingly and willfully violated 52 U.S.C. § 30118(b)(3)(C) and 11 C.F.R. § 114.5(a)(2) and (4)-(5) through their participation in the unlawful solicitations. Accordingly, the Commission has closed the file in this matter.

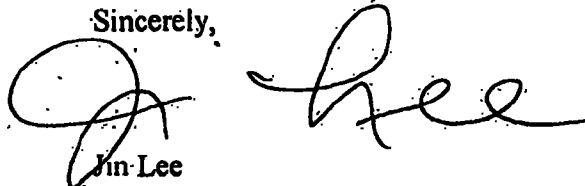
Documents related to the case will be placed on the public record within 30 days. See Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug.

Mark Gilliam
MUR 7041
Page 2

2, 2016). A copy of the Factual and Legal Analysis and the agreement with Local 469 and Arizona Pipe Trades Fed. PAC are enclosed for your information

If you have any questions, please contact Shanna Reulbach, the staff attorney assigned to this matter, at (202) 694-1638.

Sincerely,

A handwritten signature in black ink, appearing to read "Jin-Lee". The signature is fluid and cursive, with a large initial "J" and "L".

Jin-Lee

Acting Assistant General Counsel

Enclosures

Conciliation Agreement
Factual and Legal Analysis

14054414-11000

BEFORE THE FEDERAL ELECTION COMMISSION

SEP 14 AM 8:04

In the Matter of)
)
United Association of Journeymen)
and Apprentices of the Plumbing)
and Pipefitting Industry of the)
United States and Canada)
Local 469; and)
)
United Association of Plumbers)
and Pipefitters Local 469 Federal)
Political Action Committee)
(Arizona Pipe Trades Fed. PAC))
and Aaron Butler in his official)
capacity as treasurer)

OFFICE OF GENERAL

MUR 7041

CONCILIATION AGREEMENT

This matter was generated by a complaint filed with the Federal Election Commission ("Commission"). See 52 U.S.C § 30109(a)(1). The Commission found reason to believe that the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada Local 469 ("Local 469") and United Association of Plumbers and Pipefitters Local 469 Federal Political Action Committee (Arizona Pipe Trades Fed PAC) and Aaron Butler in his official capacity as treasurer ("Local 469 Federal PAC") (collectively, "Respondents") violated 52 U.S.C § 30118(b)(3)(C) and 11 C.F.R. § 114.5(a)(2) and (4)-(5) through the use of a deficient payroll authorization form and 52 U.S.C. § 30118(b)(3)(A) and (C) and 11 C.F.R. § 114.5(a)(1)- (2), and (4) through the maintenance and publication of a noncontributors list in conjunction with verbal solicitations.

NOW, THEREFORE, the Commission and the Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 52 U.S.C § 30109(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Local 469 is a labor organization affiliated with the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada. Local 469 Federal PAC is a separate segregated fund ("SSF") of Local 469 and is currently registered with the Commission as a connected political committee.

2. The Federal Election Campaign Act of 1971, as amended (the "Act") prohibits a labor organization from making a contribution in connection with a federal election. 52 U.S.C § 30118(a); 11 C.F.R. § 114.2(b). Labor organizations are permitted to establish and solicit political contributions to an SSF. 52 U.S.C § 30118(b)(2)(C); 11 C.F.R. § 114.1(a)(2)(iii).

3. All contributions to an SSF must be voluntary and without coercion. *See* 52 U.S.C § 30118(b)(3)(A); 11 C.F.R. § 114.5(a).

4. The Act and the Commission's regulations make it unlawful for any person to solicit a contribution to an SSF from an employee without informing the employee of the political purpose of the SSF and of the right to refuse to contribute to the SSF without reprisal. 52 U.S.C § 30118(b)(3)(B)-(C); 11 C.F.R. § 114.5(a)(3)-(4)). Further, if a labor organization suggests an amount to be contributed, the solicitation must state that the guideline is merely a suggestion and that the individual is free to contribute more or less and that the organization will not favor or disadvantage anyone because of the amount of the contribution or a decision not to contribute.

1 11 C.F.R. § 114.5(a)(2). A solicitation may, in certain circumstances, be considered coercive if
2 proper notices are not given.

3 5. To fund its SSF, Local 469 uses a payroll deduction authorization ("check-off") form
4 that states:

5 So that the common interests of Local 469 members to secure jobs,
6 fair wages and safe working conditions can be heard by state and
7 federal politicians, I voluntarily authorize and direct the above-
8 named employer and any signatory to the Arizona Area Pipe
9 Trades Agreement for whom I work to deduct the suggested 0.75%
10 (.0075), as ratified by Local 469 membership, each week from my
11 pay for transfer to the Local 469 Political Action Committee.
12

13 6. Local 469's check-off form does not state that an individual has the right to refuse to
14 make a contribution and does not provide a member with notice that he or she is free to
15 contribute more or less than 0.75% without favor or disadvantage.

16 7. Additionally, Respondents maintain a list of members who do not contribute to its
17 political committees. Under the title, "PAC NON-CONTRIBUTORS," the list is posted in the
18 union hall adjacent to a second list of expelled union members. The list is on display during
19 monthly meetings of union members and during presentations on Local 469 Federal PAC
20 activity, including meetings where verbal solicitations for contributions are made. The
21 solicitations did not include notices that members had the right to refuse to contribute or, to the
22 extent that it discussed the 0.75% guideline included on the check-off form, that members were
23 free to contribute more or less without favor or disadvantage.

24 V. Respondents violated 52 U.S.C § 30118(b)(3)(C) and 11 C.F.R. § 114.5(a)(2) and (4)-
25 (5) through the use of a deficient payroll authorization form and 52 U.S.C. § 30118(b)(3)(A) and

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1 (C) and 11 C.F.R. § 114.5(a)(1)-(2), and (4) through the maintenance and publication of a
2 noncontributors list in conjunction with verbal solicitations.

3 VI. Respondent will take the following actions:

4 1. Respondents will pay a civil penalty to the Federal Election Commission in the
5 amount of Twenty-One Thousand Dollars (\$21,000.00), pursuant to 52 U.S.C. § 30109(a)(5)(A).

6 2. Respondents will cease and desist from violating 2 U.S.C. §§ 30118(b)(3)(A) and (C),
7 and 11 C.F.R. § 114.5(a)(1)-(2) and (4)-(5) by ceasing to publish the names of non-contributing
8 members in conjunction with solicitations for contributions to the Respondents' political
9 committees, by providing proper notice of the members' right to refuse to contribute without any
10 reprisal, and by informing members that any guidelines are merely suggestions, an individual is
11 free to contribute more or less than the guideline, and that the labor organization will not favor or
12 disadvantage anyone by reason of the amount of their contribution or their decision not to
13 contribute. Such notices will be provided in any and all solicitations for contributions whether
14 written or oral, at the time of solicitation.

15 VII. The Commission, on request of anyone filing a complaint under 52 U.S.C
16 § 30109(a)(1) concerning the matters at issue herein or on its own motion, may review
17 compliance with this agreement. If the Commission believes that this agreement or any
18 requirement thereof has been violated, it may institute a civil action for relief in the United States
19 District Court for the District of Columbia.

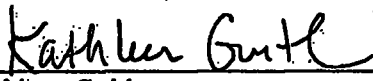
20 VIII. This agreement shall become effective as of the date that all parties hereto have
21 executed same and the Commission has approved the entire agreement.

22 IX. Except as otherwise provided, Respondents shall have no more than 30 days from the
23 date this agreement becomes effective to comply with and implement the requirements contained
24 in this agreement and to so notify the Commission.

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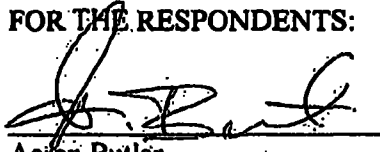
X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and the amount specified in Paragraph VI.1. constitutes the entirety of the monetary payments necessary to satisfy this agreement. No other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:


Kathleen Guith
Associate General Counsel
For Enforcement

10-5-17
Date

FOR THE RESPONDENTS:


Aaron Butler
Treasurer,
Arizona Pipe Trades Local 469

4/27/17
Date

11/03/17 11:44:44 AM

1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5 Respondents: United Association of Journeymen and MUR: 7041
6 Apprentices of the Plumbing and
7 Pipefitting Industry of the United
8 States and Canada Local 469

9
10 United Association of Plumbers and
11 Pipefitters Local 469 Federal Political
12 Action Committee (Arizona Pipe Trades
13 Fed. PAC) and Aaron Butler in his
14 official capacity as treasurer
15

16 **I. INTRODUCTION**

17 The Complaint in this matter makes two principal allegations against the United
18 Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the
19 United States and Canada Local 469 ("Local 469") and three connected political committees
20 ("PACs"), including a state-registered PAC, a current federal PAC, and a now-terminated federal
21 PAC. First, it alleges that Local 469's state committee triggered federal political committee
22 status in 2011, but failed to register or file disclosure reports with the Federal Election
23 Commission (the "Commission") at that time.¹ Second, the Complaint contends that Local 469
24 and its three committees have coercively solicited contributions from members since at least
25 2011.²

¹ Compl. at 5 (Apr. 13, 2016).

² *Id.* at 5-18. The Complaint makes a third allegation that a lawyer and consultant for Local 469, Israel G. Torres, and the treasurers of each respondent committee "participated in a scheme to transfer illegally coerced member contributions made to the Plumbers Local 469 PACs, to PACs controlled by Israel G. Torres." *Id.* at 18. The Complaint continues that once Local 469 member contributions "are in the hands of [] Torres and his PACs, those funds can be, and were used, any way Israel G. Torres saw and continues to see fit, and without any authority, oversight or supervision by the members of Plumbers Local 469 and with very limited public disclosure." *Id.*

On its face, this information does not appear to state a violation of the Federal Election Campaign Act of 1971, as amended (the "Act"), and to apply any portion of the Act or Commission regulations would require the Commission to speculate as to facts not currently part of the record.

1 Our review indicates that, even if Local 469's state committee triggered federal political
2 committee status in 2011 and failed to timely register or report with the Commission, for the
3 reasons discussed below, the claim does not merit use of additional Commission resources. The
4 Commission therefore dismisses the allegation as a matter of prosecutorial discretion.

5 However, the present record also indicates that, since at least 2011, Local 469 and its
6 political committees have coerced union members to make contributions through various means.
7 Therefore, the Commission finds reason to believe the Local and its current federal committee
8 violated 52 U.S.C. § 30118(b)(3) and 11 C.F.R. § 114.5(a).

9 **II. FACTUAL AND LEGAL ANALYSIS**

10 **A. Local 469's Arizona State PAC Likely Failed to Timely Register and Report**
11 **as a Federal Political Committee, but Such Failures Do Not Merit Use of**
12 **Additional Commission Resources at This Time**

13 Local 469 is a labor organization affiliated with the United Association of Journeymen
14 and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada.³ The
15 Local maintains separate segregated funds ("SSFs") for the purpose of engaging in federal and
16 non-federal political activity and has registered at least three connected political committees in
17 recent years.⁴

18 The first of these committees, known as Arizona Pipe Trades 469 ("Arizona State PAC"),
19 has been registered with the Arizona Secretary of State as an Arizona political action committee

³ *Id.* at 2; *see also* Amended Statement of Org., Local Union No. 469 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the U.S. & Canada PAC (Arizona Pipe Trades Local 469 PAC) (Sept. 10, 2012), <http://docquery.fec.gov/pdf/834/12952875834/12952875834.pdf> (amending Statements of Org. filed Apr. 5, 2012 and July 19, 2012).

⁴ Resp. at 1-2 (May 17, 2016); Compl. at 2-3.

1 since 1991.⁵ The Complaint alleges that the Arizona State PAC triggered federal committee
2 status in 2011 by raising and spending money to influence federal elections and identifies five
3 contributions to federal candidates that the Arizona State PAC reported to the Arizona Secretary
4 of State between 2011 and 2014.⁶ The Complaint also states that in 2011, the union
5 implemented a new payroll deduction authorization ("check off") form that asks members to
6 authorize contributions "[s]o that the common interests of Local 469 members . . . can be heard
7 by state *and federal* politicians."⁷

8 The Act and Commission regulations provide that any SSF established under 52 U.S.C.
9 § 30118(b) is a political committee,⁸ and that any SSF shall register with the Commission within
10 10 days after establishment, except where the SSF is established solely for the purpose of
11 financing political activity in connection with state or local elections.⁹ An SSF formed
12 exclusively for the purpose of participating in state and local elections is not required to register
13 with the Commission; however, if at any time the connected organization decides to use the SSF,
14 wholly or in part, to influence federal elections, it must register with the Commission within ten
15 days of the decision to do so.¹⁰ When an organization finances both federal and non-federal

⁵ Search Results for Arizona Pipe Trades 469, ARIZ. SEC. OF STATE, <http://apps.azsos.gov/apps/election/cfs/search/AdvancedSearch.aspx> (listing Aug. 29, 1991 as committee registration date).

⁶ Compl. at 5 and Ex. 1. The Commission has identified an additional eleven contributions to federal candidates disclosed on the Arizona State PAC's state reports between 2011 and 2014. *See* Search Results for Arizona Pipe Trades, ARIZ. SEC. OF STATE, <http://apps.azsos.gov/apps/election/cfs/search/CommitteeSearch.aspx> (showing that, on Schedule E3, Contributions to Other Committees, the Arizona State PAC reported sixteen total contributions to federal candidate committees during the 2012 and 2014 election cycles).

⁷ Compl. Exs. 3-4 (emphasis added); *see also infra* Part II.B (further describing the solicitation contained in Local 469's payroll deduction authorization form).

⁸ 52 U.S.C. § 30101(4)(B); 11 C.F.R. § 100.5(b).

⁹ 52 U.S.C. § 30103; 11 C.F.R. § 102.1(c).

¹⁰ 11 C.F.R. § 102.1(c) ("Examples of establishment events after which a fund would be required to register include, but are not limited to: A vote by the board of directors or comparable governing body of an organization to

1 political activity, it may use separate accounts for each type of activity¹¹ or a single account for
2 both.¹² If the organization elects to use a single account, all contributions received are subject to
3 the limits and prohibitions of the Act, regardless of the purpose for which they are used.¹³

4 The Respondents acknowledge that the Arizona State PAC made contributions to federal
5 candidates, but assert that the committee was concurrently registered and reporting with the
6 Commission. Respondents explain that, beginning in 2012, Local 469 sought to expand the
7 Arizona State PAC's activities to include federal contributions.¹⁴ At that time, the Arizona State
8 PAC registered as a federal political committee known as Arizona Pipe Trades Local 469 PAC
9 ("Arizona Pipe Trades Federal PAC")¹⁵ to comply with the Act and Commission regulations.¹⁶
10 The Arizona State PAC remained registered in Arizona and continued to engage in non-federal
11 activity.¹⁷ Thus, during this period, the Local used a single account — known at the state level
12 as the Arizona State PAC and at the federal level as the Arizona Pipe Trades Federal PAC — to
13 simultaneously engage in federal and non-federal activity. During this period of dual

create a [SSF] to be used wholly or in part for federal elections"); Advisory Op. 1985-18 at 2-3 (Michigan Auto Club PAC) ("AO 1985-18") (opining that an SSF previously used exclusively for non-federal political activity could expand its operations to include federal political activity, provided that: (1) the combined state/federal SSF registered as a federal political committee within 10 days of the decision to influence federal elections and before making any federal contributions; and (2) all contributions the SSF received complied with the limits and prohibitions of the Act).

¹¹ 11 C.F.R. § 102.5(a)(i).

¹² 11 C.F.R. § 102.5(a)(ii).

¹³ *Id.*

¹⁴ Resp. at 1-2.

¹⁵ Statement of Org., Arizona Pipe Trades Local 469 PAC (Apr. 5, 2012), <http://docquery.fec.gov/pdf/196/12030763196/12030763196.pdf>, (amended July 19, 2012 and Sept. 10, 2012).

¹⁶ See 11 C.F.R. §§ 102.1(c), 102.5(a)(ii).

¹⁷ Under Arizona state law, an SSF established by a labor organization for political purposes is a state political committee and must register with the Secretary of State as such if it intends to receive contributions or make expenditures of more than \$500, ARIZ. REV. STAT. §§ 16-901(20)(b), 16-902.02, even if the SSF is registered in another state or pursuant to federal law, *see* ARIZ. REV. STAT. § 16-902.02.

1 registration,¹⁸ the SSF accepted only contributions subject to the limits and prohibitions of the
2 Act,¹⁹ and appears to have reported all activity to both the Arizona Secretary of State and the
3 Commission.²⁰

4 Respondents acknowledge that even under this timeline, one of the contributions
5 identified by the Complaint — \$500 given to Kirkpatrick for Arizona on June 15, 2011 — was
6 made before the Arizona State PAC registered as a federal committee in April 2012.²¹ However,
7 Respondents state that when the Arizona State PAC became aware that it may have triggered
8 federal political committee status by doing so, it “immediately” requested a refund from
9 Kirkpatrick for Arizona.²² An exhibit attached to the Response shows that Kirkpatrick for
10 Arizona issued a refund on January 19, 2012, which the SSF received on January 30, 2012.²³

11 Given these facts, it is not worth the Commission’s resources to pursue this allegation
12 further.²⁴ At the outset, the statute of limitations would have expired on the Arizona State

¹⁸ The Arizona State PAC terminated its federal registration on January 15, 2015 but continues to operate as an Arizona political committee. Termination Approval, Arizona Pipe Trades Local 469 PAC (Jan. 15, 2015), <http://docquery.fec.gov/pdf/196/15330072196/15330072196.pdf>. Seven months later, on August 14, 2015, Local 469 registered its third committee, a new connected federal political committee known as the United Association of Plumbers and Pipefitters Local 469 Federal PAC (“Arizona Pipe Trades Fed PAC”). Statement of Organization, United Association of Plumbers and Pipefitters Local 469 Federal Political Action Committee (Arizona Pipe Trades Fed PAC) (Aug. 14, 2015), <http://docquery.fec.gov/pdf/512/201508149000825512/201508149000825512.pdf>. The new federal committee is operated out of a separate account, pursuant to 11 C.F.R. § 102.5(a)(i).

¹⁹ 11 C.F.R. § 102.5(a)(1)(ii).

²⁰ All of the SSF’s federal contributions in the 2012 and 2014 cycles were reported to both the Arizona Secretary of State and the Commission. It is not possible to compare all contributions that the committee reported receiving, as Arizona and the Commission have different itemization thresholds; however the total amounts that each committee reported receiving appear to be approximately equal, as do the total expenditures each reported.

²¹ Resp. at 2-3.

²² *Id.*

²³ *Id.* Ex. 1.

²⁴ See 52 U.S.C. § 30104(a)(4). The Complaint also alleges that the Arizona Pipe Trades Federal PAC also failed to update its treasurer of record when the treasurer of the committee, Phillip McNally, resigned his position as business manager of Local 469 in July 2014. Compl. at 4. Complainant believes that the Local’s new business manager, Aaron Butler, should have designated as treasurer of the committee at that time. *Id.* However, the

1 PAC's failure to register as a federal political committee on June 15, 2016.²⁵ And although
2 violations of the quarterly reporting requirements remain, the state committee registered with the
3 Commission roughly nine months later, made no other federal contributions in the intervening
4 period, and disclosed all of its transactions to the public via its registration as the Arizona State
5 PAC and its disclosures to the Arizona Secretary of State. The Commission therefore dismisses
6 as a matter of prosecutorial discretion the allegation that Local 469 and the Arizona State PAC
7 violated 52 U.S.C. §§ 30103 and 30104(a) and 11 C.F.R. § 102.1(c).

8 **B. Local 469 Coercively Solicited Member Contributions to Its Separate**
9 **Segregated Fund Through Various Means**

10 The Complaint further alleges that Local 469 and its committees have coercively solicited
11 contributions from union members since at least 2011. According to the Complaint,
12 Respondents made coercive solicitations by: (1) threatening reprisal against non-contributors in a
13 union magazine; (2) using a check-off form that lacked sufficient notices to ensure the
14 voluntariness of member contributions; and (3) maintaining a non-contributor list that was
15 displayed at union meetings where verbal solicitations were made.²⁶

16 The Act and Commission regulations prohibit labor organizations from making
17 contributions in connection with a federal election.²⁷ A labor organization may establish an SSF
18 for the purpose of engaging in federal political activity,²⁸ but the labor organization may only

Complaint presents no information to indicate that McNally did not continue to fulfill the duties of committee treasurer after he resigned as business manager of the union. Indeed, the committee's reports continued to bear McNally's name and signature until its termination in January 2015.

²⁵ 52 U.S.C. § 30145.

²⁶ Compl. at 5.

²⁷ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).

²⁸ 52 U.S.C. § 30118(b)(2)(c).

1 solicit contributions to the SSF from members and their families.²⁹ All such contributions must
2 be voluntary,³⁰ and the SSF may not make contributions or expenditures using “money or
3 anything of value secured by physical force, job discrimination, financial reprisals, or the threat
4 of force, job discrimination, or financial reprisal; or by dues, fees, or other monies required as a
5 condition of membership.”³¹

6 In addition, the Act and Commission regulations require persons soliciting contributions
7 to inform members at the time of the solicitation of the political purposes of the SSF and of the
8 member’s right to refuse to contribute without reprisal.³² Further, if the labor organization
9 suggests an amount to be contributed, the solicitation must also state that the guideline is merely
10 a suggestion and that the individual is free to contribute more or less.³³ A solicitation may be
11 considered coercive if proper notices are not given.³⁴

12 The Commission has previously applied these provisions to union check-off forms, and
13 endorsed sample language that conforms with the “right to refuse”³⁵ and “suggested
14 contribution”³⁶ requirements. It has also applied these requirements to non-contributor lists. For

²⁹ 52 U.S.C. § 30118(b)(4)(A)(ii).

³⁰ 52 U.S.C. § 30118(b)(3)(A); 11 C.F.R. § 114.5(a).

³¹ 52 U.S.C. § 30118(b)(3)(A); 11 C.F.R. § 114.5(a).

³² 52 U.S.C. § 30118(b)(3)(B)-(C); 11 C.F.R. § 114.5(a)(3)-(4).

³³ 11 C.F.R. § 114.5(a)(2).

³⁴ Conciliation Agreement at ¶7, MUR 5337 (First Nat’l Consumers Bank) (“A solicitation can also be coercive if proper notice is not given.”).

³⁵ Advisory Opinion 2006-17 (Berkeley Electric Cooperative) (“AO 2006-17”). In that opinion, the Commission approved a sample checkoff card that: (1) asked members to affirm that they “voluntarily donate”; (2) contained a blank check box that allowed a member to choose “I elect not to participate at this time”; (3) and stated “I am also fully aware that should I elect not to participate I may do so without any concern of retaliation.”

³⁶ *Id.* The sample card in AO 2006-17 also contained suggested contribution amounts, clearly labeled them “recommended amounts per pay period” and explicitly stated “[t]he recommended contribution amounts listed above are merely suggestions. Employees may choose to give more or less than those stated. [Requestor] will not

1 example, in MUR 5681 (High Point Association of Realtors), the Commission found that a trade
2 association violated the Act and Commission regulations by publishing in its monthly newsletter
3 a list of members who had “not yet” contributed to its political committee with the words “Have
4 you made your contribution?”³⁷ The Commission stated that, when paired with a solicitation, a
5 non-contributor list violates the Act and Commission regulations by failing to include the
6 appropriate notices to ensure the voluntariness of contributions.³⁸ However, in at least one other
7 matter, the Commission has indicated that, even when a solicitation and non-contributor list is
8 subsequently supplemented by the notices required in 11 C.F.R. § 114.5(a)(2)-(4), the notices
9 may not be sufficient to cure the implied threat of job discrimination or reprisal inherent in a
10 solicitation paired with a non-contributor list.³⁹

11 The Complaint first alleges that the Local coerced member contributions by threatening
12 job discrimination against non-contributors. It states that, in the summer of 2011, Phillip
13 McNally, then-business manager of the Local and treasurer of the Arizona State PAC, wrote an
14 article in a magazine distributed by the Local. In the article, McNally stated “the PAC
15 contribution has changed to 0.75% and the new forms will reflect that change. Please be sure to

favor nor disfavor employees according to pledged donations.” The card also provided a blank space for employees to write in the exact amount they wished to contribute.

³⁷ Factual & Legal Analysis at 1-2, MUR 5681 (High Point Assn. of Realtors). This matter also included allegations that the trade association regularly displayed the names of non-contributing members on an overhead projector at its monthly and annual meetings. First Gen. Counsel’s Rpt., MUR 5681. However, the Commission ultimately made no finding with respect to that conduct.

³⁸ Factual & Legal Analysis, MUR 5681 (High Point Assn. of Realtors); MUR 5337 (First Consumers Nat’l. Bank) (concluding that an employer’s written solicitation that included a noncontributory list was coercive, in part because it failed to include notice of recipients’ right to refuse to contribute and notice that the recommended \$50 contribution was merely a suggestion and that individuals were free to contribute more or less).

³⁹ MUR 5379 (CarePlus Medical Centers) (concluding that an employer’s solicitation that requested “an accounting of the individuals that donate and those that did not” was coercive, despite the employer’s subsequent statement that employees “may refuse to contribute without reprisal and contributions . . . are strictly voluntary”).

1 complete a new form by July 1 or your standing as a member of the local may be
2 jeopardized.”⁴⁰ It continues, “the PAC contribution has been increased from \$0.03 per hour to
3 0.75% per hour. It is obvious the majority of our local supports this increase and our ability to
4 create any future success for you and your families through political action rests with each
5 and every member participating by signing the PAC check-off.”⁴¹ Respondents note that, at
6 the time of the magazine article, the SSF was only engaged in non-federal activity “thus to the
7 extent this newsletter article is a solicitation, it was not for a federal political committee.”⁴²

8 In making these statements, the Local suggests that political contributions are a condition
9 of membership and threatens job discrimination against those who do not authorize payroll
10 deductions to the SSF. Based on Commission precedent, such conduct may be considered
11 coercive particularly where solicitations lack appropriate notices to ensure voluntary
12 contributions. However, the newsletter that included this statement was distributed in “Summer
13 2011,” and the applicable statute of limitations prevents the Commission from pursuing this
14 allegation, as the activity occurred over five years ago. Moreover, as Respondents note, the
15 newsletter was distributed potentially before the SSF was a federal political committee, which
16 would render the conduct outside the Commission’s jurisdiction.⁴³

17 The Complaint next alleges that the Local coerced member contributions by failing to
18 include the appropriate notices on a check-off form used by union members to authorize the

⁴⁰ Compl. Ex. 2 (emphasis in original).

⁴¹ *Id.* (emphasis in original).

⁴² Resp. at 4.

⁴³ Respondents argue that the date of publication is significant because at the time, “the SSF was operating as QSLPO and thus to the extent this newsletter article is a solicitation, it was not for a federal political committee.” Resp. at 4. As noted above, however, the SSF appears to have triggered federal political committee status in June 2011.

1 deduction of SSF contributions from members' paychecks.⁴⁴ According to the Complainant,
2 who is a union member, the Local adopted the current language on its check-off form in 2011.⁴⁵
3 He submits copies of the check-off form that he signed in 2014 and 2015,⁴⁶ and states that this is
4 the same form that the Local has distributed to all members "for the past several years."⁴⁷ Under
5 the heading "Local 469 Political Action Committee," the check-off form states:

6 So that the common interests of Local 469 members to secure jobs,
7 fair wages and safe working conditions can be heard by state and
8 federal politicians, I voluntarily authorize and direct the above-
9 named employer and any signatory to the Arizona Area Pipe
10 Trades Agreement for whom I work to deduct the suggested 0.75%
11 (.0075), as ratified by Local 469 membership, each week from my
12 pay for transfer to the Local 469 Political Action Committee.⁴⁸

13 The Complaint asserts that this language lacks the notices required on SSF solicitations to
14 ensure that contributions are voluntary.⁴⁹ Specifically, it alleges that the Local's check-off form
15 does not satisfy the Act and regulations' requirements because it fails to state: (1) that the 0.75%
16 contribution guideline is a suggestion and that the individual is free to contribute more or less;
17 and (2) that an individual has the right to refuse to make a contribution.⁵⁰ Respondents deny the
18 allegations. They note that the check-off form identifies the 0.75% guideline as a "suggested"

⁴⁴ Attachment 1; Compl. Exs. 3-4.

⁴⁵ Compl. at 5.

⁴⁶ *Id.* Exs. 3-4.

⁴⁷ *Id.* at 6.

⁴⁸ *Id.* Exs. 3-4

⁴⁹ *Id.* at 6-8.

⁵⁰ *Id.* at 7. The Complaint also alleges that the check-off solicitation fails to state the political purposes of the SSF, as it does not inform members that contributions may be allocated to either the Local's state or federal PAC or any indication of how contributions will be allocated. *Id.* There does not appear to be any Commission precedent supporting the Complainant's contention that the Local's statement of purpose was insufficient. Albeit superficial, the Respondents' statement of purpose does indicate that contributions will be used for political purposes, and specifically, to influence both state and local elections.

1 amount and that the form asks members to affirm that the contribution is “voluntarily
2 authorize[d].”⁵¹

3 On its face, the check-off form lacks notice that an individual has the right to refuse to
4 make a contribution.⁵² In addition, although the check-off form states that the 0.75%
5 contribution is “suggested,” it does not provide a member with notice that he or she is free to
6 contribute more or less without favor or disadvantage or the opportunity to contribute an
7 alternative amount.⁵³

8 The Complaint further states that Local 469 maintained a list of members who do not
9 contribute to its political committees. The Complaint attaches a list of “PAC NON-
10 CONTRIBUTORS,” showing member names, their respective company names and a column
11 entitled “PAC” for which a zero is filled in for each member.⁵⁴ Complainant also attaches
12 pictures of a bulletin board from the union hall where the “PAC NON-CONTRIBUTORS” list

⁵¹ Resp. at 2-3.

⁵² Compare Advisory Op. 2006-17. Contrary to Respondents’ assertions, the mere declaration that a contribution is “voluntary” does not satisfy the requirement that solicitations provide notice of the right to refuse without reprisal. See Conciliation Agreement at IV.13, MUR 5337 (First Consumers Nat’l. Bank) (stating that merely including the word “voluntary” once “does not diminish the coercive nature of the solicitations or satisfy the requirements of 11 C.F.R. § 114.5(a)(2)-(4)”; Advisory Op. 1998-19 at 11 (Credit Union Nat’l. Ass’n.) (“While the brochure states that the contributions are ‘voluntary’ it does not include a statement that there would be no reprisal should the member refuse to contribute. This deficiency would need to be corrected before the brochures could be used in the proposed solicitations.”); see also Advisory Op. 1988-3 (Pilots Assn.) (requiring SSFs to adhere to 11 C.F.R. § 114.5 to ensure contributions are voluntary).

⁵³ See MUR 5337 (First Consumers Nat’l. Bank) (finding that the solicitation “There are still quite a few managers who have not turned in their \$50.00 contribution for the Oregon Bank PAC. If you have not done so, Mr. Aube would appreciate your contribution check by Friday....” lacked notice that solicitees had right to refuse to contribute without reprisal and that the contribution guideline of \$50 was merely a suggestion and that the individual was free to contribute more or less without favor or disfavor); compare Advisory Op. 2006-17 Ex. 1.

⁵⁴ Compl. Ex. 5. Emails attached to the Complaint show correspondence from Local business manager and committee treasurer Aaron Butler stating that “the Local 469 monthly non-PAC contributor list includes the names of members currently working . . . who have elected to not contribute pursuant to the check-off system provided in that collective bargaining agreement.” *Id.* Ex. 6. In a second email responding to Complainant’s question of how Butler knows the list is accurate, Butler states that “[o]ur list is pulled directly from our internal software each month, which insures [sic] accuracy.” *Id.*

1 was publicly posted adjacent to another list entitled "EXPELLED MEMBERS."⁵⁵ Complainant
2 asserts that the non-contributors list "has been publicized at union meetings and PAC
3 presentations for several years" and that he has "personally seen this list publicized at every
4 monthly meeting and PAC presentation he has attended since September 2014."⁵⁶ The
5 Complaint identifies at least one meeting, on August 21, 2015, at which counsel and consultant
6 for the Respondents, Israel Torres, made a verbal solicitation while the non-contributor list was
7 visible. He claims that Torres discussed the purpose of the PACs, the PACs' activities, and the
8 benefits to members, and also encouraged support for the PACs.⁵⁷

9 Respondents do not deny maintaining or publicizing a non-contributors list. The Local
10 argues, however, that its list does not contain a solicitation, and that the union therefore does not
11 coerce contributions by maintaining or posting it.⁵⁸ Respondents also note that, to the extent that
12 any member decided to contribute as a result of the list, the member would have to use its payroll
13 authorization form and would then see the notices included to ensure voluntariness.⁵⁹ As
14 explained above, however, the notices in the authorization form were inadequate. The Response
15 also does not deny that Torres made verbal solicitations of members on August 21, 2015 or any
16 other date while the non-contributor list was visible, but it argues that the information contained

⁵⁵ *Id.* Ex. 6. The "EXPELLED MEMBERS" list was also attached to the complaint at Exhibit 5.

⁵⁶ *Id.* at 12.

⁵⁷ *Id.* at 16-17.

⁵⁸ Resp. at 3.

⁵⁹ *Id.* In addition, Respondents state that "in an abundance of caution," the Local has since adopted a policy of only posting non-contributor lists "with the solicitation notice described by 11 C.F.R. § 114.5." *Id.* at 6, Ex. 2. This appears to suggest that the Local has begun posting the "solicitation notice described by 11 C.F.R. § 114.5" on the bulletin board alongside its non-contributor list; however, it is not clear what language the Local is using in doing so. That is, it is not clear whether the Local has added the language of the regulation itself or some other variant.

1 in the Complaint shows that he provided adequate notices to satisfy voluntariness requirements.⁶⁰
2 As explained below, however, the verbal solicitations do not appear to have included complete
3 disclaimers.

4 The record evidence indicates that the list was publicized in a space frequently used for
5 union meetings, including presentations on the activities of Local 469's political committees
6 which encouraged support for the PACs. Further, the record indicates that on at least one
7 occasion, August 21, 2015, such a presentation verbally solicited members to contribute to its
8 political committees, within view of the non-contributor's list and the attached "expelled
9 members" list.⁶¹ According to the Complainant, this presentation was not anomalous, and it
10 appears likely that other presentations contained similar solicitations. Thus, the Local publicized
11 the non-contributors list in conjunction with verbal solicitations and an "expelled members" list.
12 This conduct provides reason to believe the Local made threats that members who did not
13 respond to the solicitation would be subject to job discrimination or reprisal, or that their
14 membership in the union would be jeopardized by non-participation.

15 Although the Complaint acknowledges that the verbal solicitations generally included
16 statements of the PACs' political purposes,⁶² there is no indication that they included statements
17 that members had the right to refuse to contribute or, to the extent that they discussed the 0.75%
18 guideline included on the check-off form, that members were free to contribute more or less
19 without favor or disadvantage. Respondents argue that members responding to the verbal
20 solicitations would have been directed to the Local's check-off form, which it says provided the

⁶⁰ *Id.* at 6.

⁶¹ Compl. at 16.

⁶² *Id.*

1 required notices. However, as noted above, the language included in the Local's check-off form
2 is insufficient to satisfy the requirements of 11 C.F.R. § 114.5(a)(2) and (4). Moreover, even if
3 the Local has since appended language to the non-contributor list that satisfies the requirements
4 11 C.F.R. § 114.5(a)(2)-(4), Commission precedent indicates that subsequent corrective action
5 does not retroactively cure otherwise coercive solicitations.⁶³

6 This matter is, therefore, similar to MUR 5337 (First Consumers National Bank) and
7 MUR 5681 (High Point Regional Association of Realtors), in which the Commission found
8 reason to believe solicitations were coercive where solicitations lacked complete disclaimers and
9 the names of non-contributors were published. Accordingly, the Commission finds reason to
10 believe Local 469 and Arizona Pipe Trades Local 469 and Aaron Butler in his official capacity
11 as treasurer violated 52 U.S.C. § 30118(b)(3)(A), (C) and 11 C.F.R. § 114.5(a)(1), (2) (4), and
12 (5).

⁶³ See Conciliation Agreement, MUR 5379 (CarePlus Medical Centers).